

**AGREEMENT FOR THE INTEGRATION OF  
KANSAS CITY HOSPICE  
AND ITS SUBSIDIARIES INTO THE  
HEALTH MIDWEST SYSTEM**

THIS AGREEMENT is made and entered into as of the 31st day of December, 1994, by and between **KANSAS CITY HOSPICE, INC.**, a Missouri not-for-profit corporation (hereinafter referred to as "KCH"), **HEALTH MIDWEST**, a Missouri not-for-profit corporation, and **HEALTH MIDWEST DEVELOPMENT GROUP**, a Missouri not-for-profit corporation (hereinafter referred to as "HMDG").

- W I T N E S S E T H -

WHEREAS, KCH is a Missouri not-for-profit corporation which is exempt from income taxation under §501(c)(3) of the Internal Revenue Code (the "Code") and which together with its subsidiaries provides or assists in the provision of hospice services to the Kansas City metropolitan area and the surrounding region;

WHEREAS, Health Midwest is exempt from federal income taxation under §501(c)(3) of the Code and serves as the parent holding company for the Health Midwest System, which is a comprehensive integrated regional system of organizations dedicated to the delivery of health care services to the Kansas City metropolitan area and the surrounding region, and which includes general acute care hospitals and related services, behavioral health services, physician services and office facilities, home health services, outreach clinical and support services, outpatient care and wellness activities, employer health services, and other health care related activities;

WHEREAS, KCH and Health Midwest previously signed a Letter of Intent, dated July 29, 1994 (the "Letter of Intent"), which established principles of agreement for the intended integration of KCH and its subsidiaries into the Health Midwest System;

WHEREAS, the parties now desire to establish their complete agreement regarding the proposed integration;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties agree as follows:

## ARTICLE 1

### AGREEMENT TO INTEGRATE KCH AND SUBSIDIARIES INTO HEALTH MIDWEST

Section 1.1 The Strategic Plan. Prior to Closing, the parties shall develop and mutually agree upon a future strategic and financial plan for KCH as a member of the Health Midwest System, which plan may include plans for managed care network participation, physician relations, recruitment and contracting strategies for nursing and technical personnel, specific marketing strategies and action plans, and the development, modification, or enhancement of new and existing services offered through KCH. Health Midwest recognizes hospice care as an integral piece of the Health Midwest continuum of health care services and shares with KCH in its mission statement to provide quality hospice services to the Kansas City community.

In developing the strategic and financial plan for KCH within the Health Midwest System, the parties intend the integration of the services of Hospice Care of VNA ("VNA") into KCH, pending further discussions with the Board of VNA. Based upon the relative size, respect and scope of KCH and VNA in the Kansas City metropolitan area, it is anticipated that the KCH name and leadership will be continued. Closing of the integration of VNA into KCH will occur simultaneous with the closing of the integration of KCH into the Health Midwest System.

If at any time in the future Health Midwest determines that it is in its best interest to cease to provide hospice service in the Kansas City metropolitan area, and if the at-large members of the KCH Board of Directors (as reorganized pursuant to Sections 1.4 below) at the time of such decision desire to continue to provide such services, then such at-large KCH Board members shall have the right of first refusal upon any sale or transfer by Health Midwest of KCH or the assets of KCH. Such right of first refusal shall be exercised by the at-large KCH Board members within sixty (60) days following written notice from Health Midwest of its desire to sell or transfer KCH or the assets of KCH.

Section 1.2 System Support. Subsequent to the Closing Date, the Health Midwest System's corporate staff services will be made available to the CEO and appropriate staff of KCH. Health Midwest System staff support which will be available to KCH includes managed care relations, physician relations, recruitment and contracting strategies for nursing and technical personnel, marketing, public relations, finance, risk management, insurance programming, strategic planning, human resources, facility development, and information services, among others. These corporate staff support services will serve as an adjunct to the management within KCH.

Section 1.3 Operational Considerations and Management Structure. Attached as **EXHIBIT A** to this Agreement are provisions with respect to operation and management of KCH within the Health Midwest System, which provisions are incorporated by this reference herein. Such provisions shall become effective upon the Closing Date.

Section 1.4 Amendments to KCH Articles of Incorporation and Bylaws Regarding its Governance Structure. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to Closing established by this Agreement, on the Closing Date KCH shall amend its Articles of Incorporation and Bylaws as follows:

(a) The Articles and Bylaws of KCH shall be amended as appropriate and necessary to become a membership corporation under Revised Statutes of Missouri ("R.S. Mo.") Chapter 355 and to name Health Midwest Development Group ("HMDG") as the sole member of KCH with the authority to elect the Board of Directors of KCH as specified below and with all other rights and privileges of a sole member of a not-for-profit corporation organized under R.S.Mo. Chapter 355.

(b) The amended Articles of Incorporation and Bylaws of KCH shall establish a twenty-one (21) member Board of Directors of which eight (8) shall be Health Midwest hospital representatives nominated by the Health Midwest Policy Committee, five (5) shall be VNA representatives initially nominated by the VNA Corporation, and eight (8) shall be at-large members of the community nominated by the at-large nominating committee of KCH. Successors to the initial five (5) VNA representatives on the KCH Board shall be nominated by the at-large nominating committee of KCH. All nominees to the KCH Board shall be subject to election or rejection by HMDG as the sole member, and it shall act upon nominations within 60 days after receipt of same. If HMDG shall fail to elect any initial VNA nominee, then HMDG must again obtain nominations from the VNA Corporation for any position HMDG fails to fill. Similarly, if HMDG shall fail to elect any at-large nominee, then HMDG must again obtain nominations from the at-large nominating committee of KCH for any position HMDG fails to fill. In either such event, the VNA Corporation or KCH at-large nominating committee, as applicable, shall have a period of thirty (30) days to submit a different nominee for election by HMDG. HMDG shall have a period of thirty (30) days after the new nominee is submitted to elect or fail to elect the new nominee. This procedure shall be repeated as often as necessary until a nominee submitted by the VNA Corporation or KCH at-large nominating committee, as applicable, is elected by HMDG.

(c) The amended Bylaws of KCH shall provide that all elected Directors shall serve three (3)-year staggered terms with seven Directors' terms expiring each year, as applicable. Directors' terms of office will expire at the end of the stated term, and Directors will not continue to serve thereafter unless renominated and elected in the usual manner;

(d) The initial Board of Directors to serve following the Closing Date shall be the individuals named on **EXHIBIT B** attached hereto and shall serve for the designated one-, two- or three-year term shown on said **EXHIBIT B**;

(e) The amended Bylaws shall provide that HMDG, as sole member, may remove Directors who are not acting in the best interests of KCH. The successor to any Director who is removed, resigns or otherwise ceases to be a Director will be nominated by the Health Midwest Policy Committee or the at-large nominating committee of KCH, as appropriate, and elected by HMDG as the sole member;

(f) Health Midwest has established age seventy (70) as the maximum age at which a Director may be nominated and elected to serve on the Board of Directors of any Health Midwest entity. Health Midwest has also established a three (3) consecutive term limit on Board service and a conflict of interest policy which precludes from Board service any person who provides or whose firm provides \$25,000 or more in annual services to Health Midwest entities. Exceptions to the three (3)-term limit exist for certain officers and exceptions to the conflict of interest policy exist for physician board members and services subject to a competitive bid process. KCH agrees that its amended Bylaws will include Health Midwest's maximum age of service, term limit, and conflict of interest provisions except that (i) current KCH Board members who are over age seventy (70) on the Closing Date shall not be subject to the age limitation for their first term of office; and (ii) the KCH Board members' service on the KCH Board prior to the Closing Date shall not be counted for purposes of the successive term limitation;

(g) The amended Articles of Incorporation and Bylaws shall require that upon dissolution of KCH, all of the remaining assets after satisfaction of outstanding debts will be distributed to HMDG; provided that it qualifies as an organization exempt from federal income tax under Code §501(c)(3), or any successor provision thereto. If HMDG does not then so qualify, distribution of the net assets of KCH will be made to such §501(c)(3) tax exempt organization(s) as the Board of KCH may designate by resolution, subject to approval of such resolution by HMDG as sole member. If dissolution and liquidation occurs in connection with Health Midwest ceasing to provide hospice service in the Kansas City metropolitan area, then the right of first of refusal provisions set forth in Section 1.1 above shall apply prior to the dissolution;

(h) The amended Bylaws of KCH shall adopt the Health Midwest System levels of approval authority for capital expenditures and consulting and legal fees. With respect to levels of approval authority and other Health Midwest policies, KCH will be treated the same as other second tier subsidiaries within the Health Midwest System. Currently, for KCH this will mean the levels of approval authority shown on **EXHIBIT C** attached hereto;

(i) The amended Bylaws of KCH shall require that annual budgets adopted by the Board of KCH be subject to approval by Health Midwest and HMDG; and

(j) The amended KCH Articles of Incorporation and Bylaws shall contain other legally appropriate provisions as mutually agreed by KCH and Health Midwest, which provisions are not inconsistent with the foregoing.

Section 1.5 KCH Representation on HMDG Board. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to Closing established by this Agreement, on the Closing Date HMDG shall amend its corporate Bylaws as appropriate and necessary to provide that two (2) at large Directors of the reorganized KCH Board of Directors shall serve as members of the HMDG Board of Directors. The initial KCH representatives to serve on HMDG's Board of Directors shall be the individuals named on **EXHIBIT B** attached hereto and shall be elected by HMDG on the Closing Date. The successors to such KCH representatives on the HMDG Board shall be nominated by the at-large members of the KCH Board subject to election by HMDG's Board. If HMDG's Board rejects any KCH nominee, then nominations will again be made by the members of the at-large KCH Board.

Section 1.6 Amendments to Articles of Incorporation and Bylaws of KCH's Subsidiaries. Subject to the terms and conditions hereinafter set forth and only upon satisfaction of the conditions to Closing established by this Agreement, on the Closing Date each KCH subsidiary, including but not limited to, KCH Computer Systems, Inc. if it is not sold prior to the Closing Date as intended, shall amend its Articles of Incorporation and/or Bylaws as appropriate and necessary to:

(a) Establish KCH as the sole member or sole shareholder, with the authority to elect its Board of Directors and with all other rights and privileges of a sole member of a corporation organized under R.S.Mo. Chapter 355 or R.S.MO. Chapter 351, as applicable;

(b) Require that upon dissolution, all of the remaining assets after satisfaction of outstanding debts will be distributed to KCH; provided it qualifies as an organization exempt from federal income tax under Code §501(c)(3), or any successor provision thereto. If KCH does not then so qualify, distribution of the net assets will be made to such 501(c)(3) tax exempt organizations as the Board may designate by resolution, subject to approval of such resolution by KCH as sole member;

(c) Adopt the Health Midwest levels of approval authority for capital expenditures and consulting and legal fees. Currently, this will mean the levels of approval authority shown on **EXHIBIT D** attached hereto;

(d) Require that annual budgets adopted by its Board be subject to approval by KCH, HMDG and Health Midwest;

(e) Adopt Health Midwest's maximum age of service, term limit and conflict of interest provisions, except that (i) the members of the initial Board shall not be subject to the age limitation for their first term of office and (ii) service on the Board prior to the Closing Date shall not be covered for purposes of the successive term limitation; and

(f) Establish such other legally appropriate provisions as mutually agreed by KCH and Health Midwest which are consistent with the foregoing.

## ARTICLE 2

### REPRESENTATIONS

Section 2.1 Representations of KCH. KCH represents and warrants as follows:

(a) Corporate Existence and Qualification. KCH and its subsidiaries are corporations duly incorporated, validly existing and in good standing under the laws of the State of Missouri, and are in good standing in all other jurisdictions in which they are required to be qualified to do business as a foreign corporation.

(b) Authorization, Etc. The execution, delivery and performance by KCH of this Agreement and all related instruments, agreements, and documents has been duly authorized by KCH. The execution, delivery and performance by KCH of these instruments, agreements, and documents is within its corporate power, has been duly authorized by all necessary corporate action, and is not prohibited, restricted, or inhibited by (i) its Articles of Incorporation or Bylaws; (ii) the Articles of Incorporation or Bylaws of its subsidiaries or (iii) any material law, indenture, contract, instrument or agreement which is binding on KCH or its subsidiaries (other than contracts for which appropriate consents to this transaction have been or prior to the Closing will be obtained). In addition, consummation of the transactions described in this Agreement will not result in any material adverse impact upon the business, finances, prospects, relationships, or agreements of KCH or its subsidiaries.

(c) Approval of Governmental Bodies. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by KCH of this Agreement and all related agreements, instruments and documents except as set forth in **SCHEDULE 2.1(c)**, attached.

(d) Enforceability of Obligations. This Agreement and all related agreements, instruments and documents are, or upon execution on the Closing Date will be, legal, valid and binding obligations and enforceable against KCH and its subsidiaries, as applicable in accordance with their respective terms, except to the extent of applicable bankruptcy, moratorium, insolvency, reorganization and other laws and legal principles affecting or limiting creditors' rights generally.

(e) Insider Interests. Except as disclosed on SCHEDULE 2.1(e), no present officer or director of KCH or any of its subsidiaries (i) owns, directly or indirectly, in whole or in part, any of the properties used in their businesses, (ii) has received a loan or advance from any of them which is currently outstanding, (iii) has any obligation to make any loan to any of them, or (iv) has any other business relationship with KCH or its subsidiaries other than in his or her capacity as an officer or director. No present officer or director of KCH or any of its subsidiaries owns, directly or indirectly, in excess of five percent (5%) of, or controls, or is an employee, officer, director or partner of, or participant in, or consultant to, any corporation, association, partnership, limited partnership, joint venture, or other entity which is a competitor of KCH or any of its subsidiary.

(f) Financial Statements and Records. Consolidated balance sheets of KCH and its subsidiaries as of December 31, 1993 (audited) and October 31, 1994 (unaudited), and the related consolidated statements of income and retained earnings and changes in financial position for the periods then ended, and the separate balance sheets and related statements of income and retained earnings and changes in financial position of KCH, and its subsidiaries for their corresponding fiscal year ends and end of month reporting periods, copies of which have been furnished to Heath Midwest, fairly present their financial conditions as of such dates and the results of operations for the periods ended on such dates, all in accordance with generally accepted accounting principles which have been applied on a basis consistent with that of the preceding period; and since October 31, 1994, there has been no material adverse change in such conditions or such operations except those described in SCHEDULE 2.1(f) hereto. The audited combined balance sheets for KCH and the separate statements for each of its subsidiaries as of December 31, 1993, and the unaudited combined balance sheets for KCH and the separate statements for each of its subsidiaries as of October 31, 1994, copies of which have been furnished to Health Midwest, are based upon accurate information and reasonable assumptions. Except as disclosed in letters to management from independent auditors, all of the books and records of KCH and its subsidiaries, including, but not limited to, their stock record books, minute books, Bylaws, financial records, and books of account, are accurate and complete in all material respects.

(g) Compliance with Law and Other Regulations. KCH and its subsidiaries and their activities as presently conducted are substantially in compliance with the

requirements of all governmental bodies or agencies having jurisdiction over them, the conduct of their business, the use of their properties and assets, and all premises occupied by them, and, without limiting the foregoing, KCH and its subsidiaries have all required licenses, permits, certificates, registrations and authorizations needed for the conduct of their business and the use of their properties and the premises occupied by them. **SCHEDULE 2.1(g)** sets forth each such material license, permit, certificate, registration, or authorization, and the applicable expiration date, if any. KCH has delivered or made available or will prior to the Closing deliver or make available to Health Midwest true and correct copies of such licenses, permits, certificates, registrations and authorizations, as well as the most recent fire, safety and other inspection reports relating to the businesses operated by KCH and its subsidiaries. There is no act or omission on the part of KCH and its subsidiaries occurring on or before the date hereof which would subject any of them to the likelihood of any fine or suspension. Except as set forth in **SCHEDULE 2.1(g)**, KCH and its subsidiaries have not received any notice, except those complied with by them or waived by the responsible authority, from any federal, state or other governmental authority or agency having jurisdiction over their properties or activities, or any insurance or inspection body, that their operations or any of their properties, facilities, equipment, or business procedures or practices fail to comply with any applicable law, ordinance, regulation, building or zoning ordinance, code, or regulation, or requirement of any public authority or body.

(h) Litigation. Except as disclosed on **SCHEDULE 2.1(h)**, there is no pending or threatened action or proceeding to which KCH or any of its subsidiaries is or would be a party before any court, governmental agency or arbitrator, an adverse determination of which would have a material adverse effect upon any of them. No such judgment, order or decree has been entered which has, or will have, such effect. There is no claim, action or proceeding now pending or threatened before any court, administrative or regulatory body, or any government agency, which will, or could, prevent or hamper the consummation of the transactions contemplated by this Agreement.

(i) Fraud and Abuse. KCH and its subsidiaries have not received any notice of any investigation nor is any of them the subject of any pending action or proceeding which alleges that any of them have engaged in any activities which are prohibited under 42 U.S.C. §1320a-7b, or the regulations promulgated pursuant to such statute or related state or local statutes or regulations or which are prohibited by rules of professional conduct, including, but not limited to, any notices or pending investigations or proceedings which allege that any of them has engaged in any of the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under Medicare or any State health care program, as defined in 42 U.S.C. §1320a-7; (ii) knowingly and willfully making or causing to be made any false statement or



representation of a material fact for use in determining rights to any benefit or payment under Medicare or any State health care program; (iii) failure to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another, with intent to fraudulently secure such benefit or payment under Medicare or any State health care program; or (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (A) in return for referring an individual to a person for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or any State health care program, or (B) in return for recommending, purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or any State health care program.

(j) Existing Indebtedness. KCH and its subsidiaries do not have any existing indebtedness of any type except (i) that which was set forth on the combined unaudited balance sheets of KCH and its subsidiaries as of December 31, 1993, (ii) that which was incurred in the ordinary course of business since such date, and (iii) that which is described on **SCHEDULE 2.1(j)** hereto.

(k) Leases. KCH and its subsidiaries have no interest, either as lessee or lessor, in any existing leases of personal or real property which are not terminable on thirty (30) days notice, except as described on **SCHEDULE 2.1(k)** hereto, which schedule shall be updated and delivered to Health Midwest at the time of any material change in the leases described therein. All rentals due under said leases as to which KCH or any of its subsidiaries is tenant or lessee have been paid and there exists no material default by KCH, or any of its subsidiaries under the terms of said leases, and no event has occurred which, upon passage of time or the giving of notice, or both, would result in any such default or prevent KCH or any of its subsidiaries from exercising and obtaining the benefits as tenant of any options contained therein. Except as identified in **SCHEDULE 2.1(k)**, all such leases are valid and in full force and effect.

(l) Outstanding Guaranties. Except as disclosed on **SCHEDULE 2.1(l)** or on the consolidated audited financial statements, KCH and its subsidiaries have no guaranties outstanding by which any of them guarantees any indebtedness or any liability of any person or entity.

(m) Taxes; Exempt Status. KCH and its subsidiaries have filed all required federal and other tax returns and paid any taxes due pursuant thereto or pursuant to any assessment received by any of them, except such taxes, if any, as are being contested in good faith and as to which adequate reserves have been provided. Except as disclosed on **SCHEDULE 2.1(m)**, no audit of any federal, state or city

income tax returns or other tax returns of KCH or any of its subsidiaries is in progress, pending, or threatened.

True copies of all federal, state and local income tax, property tax, sales tax, Form 990, and other tax returns, tax examination and audit reports, and statements of deficiencies assessed against or agreed to by KCH and its subsidiaries since December 31, 1990 have been provided to Health Midwest. All such tax returns were based upon accurate information and were prepared in substantial conformity with the applicable tax laws. All deficiencies assessed against KCH and its subsidiaries have been paid or are being contested in good faith and are appropriately reserved against on the October 31, 1994 financial statements.

Copies of the Internal Revenue Service determination letters confirming that KCH is an organization exempt from federal income tax under §501(c)(3) of the Code and copies of all other exemption letters issued to KCH by taxing authorities have been provided to Health Midwest. KCH has not received any notice of any investigation and it is not the subject of any pending action or proceeding which alleges that it is in violation of or questions its compliance with any of the requirements of §501(c)(3) of the Code or any other provision of the Code or state law which are conditions to the continued maintenance of its tax exempt status under federal or state law. Except as disclosed on SCHEDULE 2.1(m), no audit of the exempt status of KCH is in progress, pending, or threatened by any federal, state or local authority.

(n) Employee Plans; Employment Contracts; Labor Matters. KCH and its subsidiaries have, and at the Closing Date will have, no "employee pension benefit plan" as that phrase is defined in Section 3(2) of ERISA (herein called a "Plan"), except a defined contribution/benefit pension plan meeting the requirements of ERISA and the Code (herein called "Pension Plan"). KCH and its subsidiaries have, and at the Closing Date will have, no obligations, contingent or otherwise, written or oral, which are not cancelable upon thirty (30) days notice, under any employment contract, collective bargaining agreement, nonqualified pension or retirement plan, bonus plan, stock option or purchase plan, or other contract or nonterminable agreement benefiting employees generally, group insurance, group hospitalization, or other employee benefit plan other than those listed in SCHEDULE 2.1(n), true and correct copies, certificates or descriptions of which have been delivered to Health Midwest. KCH and its subsidiaries have performed all obligations required to be performed under the Pension Plan and all such other agreements and plans and are not in default or in arrears in any material respect under any of the terms thereof. Except as set forth in SCHEDULE 2.1(n), KCH and its subsidiaries have not within the past three (3) years engaged in discussions with respect to any collective bargaining agreement and have not been the subject of any election with respect to the unionization of any of their employees, nor are any such discussions or elections now

pending, contemplated by them, or threatened by others. KCH and its subsidiaries have substantially complied with all applicable federal and state laws relating to the employment of labor, including, but not limited to, the provisions thereof relative to wages, hours, collective bargaining, discrimination and occupational safety and health standards, and are not liable for any arrears of wages or other penalties for failure to comply with any of the foregoing, which liability or failure to comply would have a material adverse effect upon any of them. KCH and its subsidiaries have not received any notice of noncompliance with any of the foregoing.

(o) Title to and Condition of Assets. KCH and its subsidiaries have, and at the Closing Date will have, good and marketable title to all property and assets purported to be owned by them, subject only to those options, rights of first refusal, liens, restrictions, encumbrances, pledges, and security interests described on **SCHEDULE 2.1(o)**. Except as disclosed on **SCHEDULE 2.1(o)**, the property and assets of KCH and its subsidiaries are in good condition and repair in all material respects, free of significant defects of materials or workmanship, and are without the present need for any major (ie: in excess of \$50,000 in any one instance or more than \$100,000 above the current fiscal year budget in the aggregate) replacement equipment, repairs, construction, or reconditions being required by any of them.

(p) Contracts and Commitments. Except as set forth or described in **SCHEDULE 2.1(p)** hereto, KCH and its subsidiaries do not have and at the Closing Date will not have any contracts or agreements which are not cancelable upon thirty (30) days notice including, but without limiting the generality of the foregoing, any commitments or obligations, contingent or otherwise, under any contract or agreement (i) for the purchase or sale of inventory, (ii) for the purchase or sale of supplies, services or other items, (iii) for the purchase or sale of any equipment or machinery, or (iv) for the performance of services for others; and at the Closing Date KCH and its subsidiaries will not have any such commitment or obligation except those incurred in the ordinary course of business, those listed in the aforesaid **SCHEDULE 2.1(p)**, or those consented to in writing by Health Midwest. KCH and its subsidiaries have performed all obligations required to be performed under any such contract or agreement and are not in default or in arrears in any material respect under the terms thereof. Except as disclosed on **SCHEDULE 2.1(p)**, none of them has received notice of any default or failure of performance under any such contract or agreement, which default or failure has not been waived or cured. Each such contract or agreement is in full force and effect on the date hereof and true and correct copies of each thereof have been or will be, prior to the Closing, made available or delivered to Health Midwest.

(q) Accounts Receivable; Reserves. The accounts receivable of KCH and its subsidiaries reflected on the October 31, 1994 financial statements are, and those existing on the Closing Date (i) shall be, comprised of valid claims in the full amount

thereof against the debtor charged therewith on their books; (ii) except as disclosed on such financial statements or otherwise disclosed to Health Midwest, shall all have been acquired in the ordinary course of business; (iii) shall be subject to no known defenses, set-offs or counterclaims; and (iv) shall be collectible in full, less the reserves for bad debts and third party payor adjustments reflected on the October 31, 1994 balance sheets and on the balance sheets to be delivered to Health Midwest between the date of this Agreement and the Closing Date.

(r) Insurance Coverages. KCH and its subsidiaries maintain in full force and effect, with no premium arrearages, insurance policies with the companies in the amounts and providing the coverages set forth in SCHEDULE 2.1(r). True and correct copies of all such policies, any endorsements thereto, and of all insurance facility inspection reports have been or will be, prior to the Closing, made available or delivered to Health Midwest. All such policies are in full force and effect, and consummation of the transactions contemplated herein shall not prevent KCH from continuing such policies on substantially the same terms in the future, except for directors and officers liability insurance coverage which Health Midwest intends to replace. If KCH and Health Midwest mutually determine that it is in KCH's best interest to discontinue one or more of its existing insurance policies and to obtain replacement coverage through Health Midwest, the discontinuance and replacement of coverage will be coordinated such that there are no gaps in coverage or effectiveness.

(s) Bank Accounts. SCHEDULE 2.1(s) hereto contains a true and complete list as of October 31, 1994 of all accounts of KCH and its subsidiaries with banks, trust companies, savings and loan associations, brokerage houses, and money managers, and the names of all persons authorized to draw thereon or to have access thereto.

(t) Trademarks, Trade Names, Etc. SCHEDULE 2.1(t) hereto sets forth all, if any, of the trademarks, trade names, service marks, patents, copyrights, registrations of KCH and its subsidiaries, or applications with respect thereto, and licenses or rights under the same presently owned, used or intended to be acquired or used by any of them, and to the extent set forth in SCHEDULE 2.1(t), the same have been duly registered in such offices as are indicated thereon.

(u) Accuracy of Information. The financial materials, schedules and other materials supplied and to be supplied to Health Midwest pursuant to this Agreement are and shall be substantially complete and correct in all material respects, include and shall include all material facts required to describe fairly and accurately the business and properties of KCH and its subsidiaries, and do not and shall not omit any material fact necessary to make such materials not misleading.

(v) Reports and Returns. KCH and its subsidiaries have timely filed all reports and returns heretofore required by federal, state or municipal authorities and all reports and returns to the various governmental authorities which control, directly or indirectly, any of their activities. All such reports and returns are based upon accurate information and reasonable assumptions and were prepared and filed in the manner prescribed by applicable law and/or regulation.

(w) Additional Documents Supplied by KCH. KCH has delivered or made available, or will deliver or make available before Closing, to Health Midwest true and exact copies of (i) all cost reports KCH has filed with Medicare and Medicaid for the last three (3) years, as well as all correspondence and other documents relating to any disputes and/or settlements with Medicare or Medicaid within the last three (3) years, and (ii) all appraisal reports, surveys or other documents which evaluate or describe any of the properties and assets of KCH or any of its subsidiaries within the last three (3) years, and (iii) all reports KCH and its predecessors in interest have filed with the U.S. Department of Health and Human Services, the U.S. Drug Enforcement Administration, Missouri Division of Health, and Missouri Health Facilities Review Committee, as well as all correspondence and other documents relating to any audits, disputes, and/or settlements with any of these governmental agencies within the last three (3) years.

(x) Subsidiaries, Partnerships and Investments. Except as disclosed in SCHEDULE 2.1(x) hereto, (i) KCH and its subsidiaries do not own capital stock or other securities of, or any equity interests or investment in, any nonpublicly traded corporation, partnership, joint venture, or other entity; (ii) all such equity interests in each of the corporations, partnerships, joint ventures and other entities named in such SCHEDULE 2.1(x) are owned free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, options, rights of third parties, charges and restrictions whatsoever (collectively "Liens") other than those disclosed on SCHEDULE 2.1(x), all of which would not materially adversely effect the operations of KCH or any of its subsidiaries.

(y) Hazardous Substances. All real property, buildings and other improvements thereon owned by KCH and its subsidiaries (for purposes of this Section 2.1(y), collectively referred to as the "property") have never been and are not currently used as a site for the storage or disposal of solid waste, infectious waste, petroleum products, pesticides, PCBs, asbestos, toxic substances or materials or hazardous substances or materials (herein collectively referred to as "hazardous substances"), except for the temporary storage of any such materials pending proper disposal. Except for the generation of hazardous substances, which have been and are being disposed of in compliance with applicable environmental laws, the property has never been and is not currently used as a site for the generation of hazardous substances. Except as disclosed on SCHEDULE 2.1(y), no underground fuel storage

tanks have ever been nor are they currently located on or within the property. KCH and its subsidiaries and the property, including any underground fuel storage tanks located within the property, are in full compliance with all environmental laws, and no event has occurred that would constitute non-compliance thereof, whether upon the giving of notice or passage of time or both. No governmental agency or authority has issued any notices or claims or commenced any proceedings regarding or alleging the existence, storage or disposal of hazardous substances on the property, or the discharge or release of hazardous substances from the property. For purposes hereof, "applicable environmental laws" shall mean the Resource Conservation and Recovery Act of 1981 (as amended) ("RCRA"), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) ("CERCLA"), the Hazardous Waste Management Act of 1978 (as amended), the Clean Air Act of 1970 (as amended), and any other environmental laws of the United States, the State of Missouri, and the ordinances of any applicable county or municipality, and "hazardous substance" and "release" shall have the meaning specified in such applicable environmental laws.

Section 2.2 Health Midwest's Representations. Health Midwest represents and warrants as follows:

(a) Corporate Existence and Qualification. Health Midwest, HMDG and VNA are corporations duly incorporated, validly existing and in good standing under the laws of the State of Missouri, and are in good standing in all other jurisdictions in which they are required to be qualified to do business as a foreign corporation.

(b) Authorization, Etc. The execution, delivery and performance by Health Midwest, HMDG and VNA of this Agreement and all related instruments, agreements, and documents have been duly authorized by such corporations. The execution, delivery and performance by Health Midwest HMDG and VNA of these instruments, agreements, and documents are within their corporate powers, have been duly authorized by all necessary corporate action, and is not prohibited, restricted, or inhibited by (i) the Articles of Incorporation or Bylaws of Health Midwest, HMDG or VNA; or (ii) any law, indenture, contract, instrument or agreement which is binding on Health Midwest, HMDG or VNA (other than contracts for which appropriate consents to this transaction have been or prior to the Closing will be obtained).

(c) Approval of Governmental Bodies. No authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by Health Midwest, HMDG and VNA of this Agreement and all related agreements, instruments and documents, except such approvals as have been or prior to the Closing will be obtained by Health Midwest.

(d) Enforceability of Obligations. This Agreement and all related agreements, instruments and documents are, or upon execution at the Closing will be, legal, valid and binding obligations and enforceable against Health Midwest, HMDG and VNA, as applicable in accordance with their respective terms, except to the extent of applicable bankruptcy, moratorium, insolvency, reorganization and other laws and legal principles affecting or limiting creditors' rights generally.

(e) Insider Interests. Except as disclosed on SCHEDULE 2.2 (e), no present officer or director of Health Midwest, HMDG or VNA (i) owns, directly or indirectly, in whole or in part, any of the properties used in their businesses, (ii) has received a loan or advance from any of them which is currently outstanding, (iii) has any obligation to make any loan to any of them, or (iv) has any other business relationship with Health Midwest, HMDG or VNA other than in his or her capacity as an officer or director. No present officer or director of Health Midwest, HMDG or VNA owns, directly or indirectly, in excess of five percent (5%) of, or controls, or is an employee, officer, director or partner of, or participant in, or consultant to, any corporation, association, partnership, limited partnership, joint venture, or other entity which is a competitor of Health Midwest, HMDG or VNA.

(f) Financial Statements. Consolidated balance sheets of Health Midwest as of December 31, 1993 (audited) and October 31, 1994 (unaudited), the related consolidated statements of income and retained earnings and changes in financial position for the period then ended, and the separate unaudited balance sheets and related statements of income and retained earnings and changes in financial position of HMDG and VNA for their corresponding fiscal year ends and end of month reporting periods, copies of which have been furnished to KCH fairly present its financial condition as of such dates and the results of operations for the periods ended on such dates, all in accordance with generally accepted accounting principles which have been applied on a basis consistent with that of the preceding period; and since October 31, 1994, there has been no material adverse change in such condition or such operations except those described in SCHEDULE 2.2(f) hereto. The audited combined balance sheets for Health Midwest as of December 31, 1993, the audited combined statements of operation for the fiscal year ending December 31, 1993, the unaudited combined balance sheets for Health Midwest as of October 31, 1994, the unaudited combined statements of operation for the period then ended, and the separate unaudited balance sheets and related statements of income and retained earnings and changes in financial position of HMDG and VNA for their corresponding fiscal year ends and end of month reporting periods, copies of which have been furnished to KCH, are based upon accurate information and reasonable assumptions. Except as disclosed in letters to management from independent auditors, all of the books and records of VNA, including, but not limited to, its stock record books, minute books, Bylaws, financial records, and books of account, are accurate and complete in all material respects.

(g) Compliance with Law and Other Regulations. VNA and its activities as presently conducted are substantially in compliance with the requirements of all governmental bodies or agencies having jurisdiction over it, the conduct of its business, the use of its properties and assets, and all premises occupied by it, and, without limiting the foregoing, VNA has all required licenses, permits, certificates, registrations and authorizations needed for the conduct of its business and the use of its properties and the premises occupied by it. **SCHEDULE 2.2(g)** sets forth each such material license, permit, certificate, registration, or authorization, and the applicable expiration date, if any. Health Midwest has delivered or made available or will prior to the Closing deliver or make available to KCH true and correct copies of such licenses, permits, certificates, registrations and authorizations, as well as the most recent fire, safety and other inspection reports relating to the businesses operated by VNA. There is no act or omission on the part of VNA occurring on or before the date hereof which would subject it to the likelihood of any fine or suspension. Except as set forth in **SCHEDULE 2.2(g)**, VNA has not received any notice, except those complied with by it or waived by the responsible authority, from any federal, state or other governmental authority or agency having jurisdiction over its properties or activities, or any insurance or inspection body, that its operations or any of its properties, facilities, equipment, or business procedures or practices fail to comply with any applicable law, ordinance, regulation, building or zoning ordinance, code, or regulation, or requirement of any public authority or body.

(h) Litigation. Except as disclosed on **SCHEDULE 2.2(h)**, there is no pending or threatened action or proceeding to which VNA is or would be a party before any court, governmental agency or arbitrator, an adverse determination of which would have a material adverse effect upon VNA. No such judgment, order or decree has been entered which has, or will have, such effect. There is no claim, action or proceeding now pending or threatened before any court, administrative or regulatory body, or any government agency, which will, or could, prevent or hamper the consummation of the transactions contemplated by this Agreement.

(i) Fraud and Abuse. VNA has not received any notice of any investigation nor is it the subject of any pending action or proceeding which alleges that it has engaged in any activities which are prohibited under 42 U.S.C. §1320a-7b, or the regulations promulgated pursuant to such statute or related state or local statutes or regulations or which are prohibited by rules of professional conduct, including, but not limited to, any notices or pending investigations or proceedings which allege that it has engaged in any of the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any application for any benefit or payment under Medicare or any State health care program, as defined in 42 U.S.C. §1320a-7; (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment under Medicare or any State health care



program; (iii) failure to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another, with intent to fraudulently secure such benefit of payment under Medicare or any State health care program; or (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (A) in return for referring an individual to a person for the furnishing of any item or service for which payment may be made in whole or in part by Medicare or any State health care program, or (B) in return for recommending, purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare or any State health care program.

(j) Existing Indebtedness. VNA does not have any existing indebtedness of any type except (i) that which was set forth on the separate unaudited balance sheets of VNA as of October 31, 1994, (ii) that which was incurred in the ordinary course of business since such date, and (iii) that which is described on **SCHEDULE 2.2(j)** hereto.

(k) Leases. VNA has no interest, either as lessee or lessor, in any existing leases of personal or real property which are not terminable on thirty (30) days notice, except as described on **SCHEDULE 2.2(k)** hereto, which schedule shall be updated and delivered to KCH at the time of any material change in the leases described therein. All rentals due under said leases as to which VNA is tenant or lessee have been paid and there exists no material default by VNA under the terms of said leases, and no event has occurred which, upon passage of time or the giving of notice, or both, would result in any such default or prevent VNA from exercising and obtaining the benefits as tenant of any options contained therein. Except as identified in **SCHEDULE 2.2(k)**, all such leases are valid and in full force and effect.

(l) Outstanding Guaranties. Health Midwest has no guaranties outstanding by which it guarantees any indebtedness or any liability of any other person or entity other than guaranties of obligations of Health Midwest subsidiaries and the guaranties described on the consolidated financial statements of Health Midwest. Except as disclosed on **SCHEDULE 2.2(l)** or on its separate unaudited financial statements, VNA has no guaranties outstanding by which it guarantees any indebtedness or any liability of any person or entity.

(m) Exempt Status. The Internal Revenue Service has issued determination letters to Health Midwest, HMDG and VNA confirming that they are organizations exempt from federal income tax under §501(c)(3) of the Code, copies of which have been provided to KCH. Neither Health Midwest, HMDG nor VNA has received any notice of any investigation nor is the subject of any pending action or proceeding which alleges that it is in violation of or questions its compliance with any of the

requirements of §501(c)(3) of the Code or any other provision of the Code or state law which are conditions to the continued maintenance of its tax exempt status under federal or state law.

(n) Employee Plans; Employment Contracts; Labor Matters. VNA has, and at the Closing Date will have, no "employee pension benefit plan" as that phrase is defined in Section 3(2) of ERISA (herein called a "Plan"), except a defined contribution/benefit pension plan meeting the requirements of ERISA and the Code (herein called "Pension Plan"). VNA has, and at the Closing Date will have, no obligations, contingent or otherwise, written or oral, which are not cancelable upon thirty (30) days notice, under any employment contract, collective bargaining agreement, nonqualified pension or retirement plan, bonus plan, stock option or purchase plan, or other contract or nonterminable agreement benefiting employees generally, group insurance, group hospitalization, or other employee benefit plan other than those listed in SCHEDULE 2.2(n), true and correct copies, certificates or descriptions of which have been delivered to KCH. VNA has performed all obligations required to be performed under the Pension Plan and all such other agreements and plans and are not in default or in arrears in any material respect under any of the terms thereof. Except as set forth in SCHEDULE 2.2(n), VNA has not within the past three (3) years engaged in discussions with respect to any collective bargaining agreement and has not been the subject of any election with respect to the unionization of any of its employees, nor are any such discussions or elections now pending, contemplated by them, or threatened by others. VNA has substantially complied with all applicable federal and state laws relating to the employment of labor, including, but not limited to, the provisions thereof relative to wages, hours, collective bargaining, discrimination and occupational safety and health standards, and are not liable for any arrears of wages or other penalties for failure to comply with any of the foregoing, which liability or failure to comply would have a material adverse effect upon any of them. VNA has not received any notice of noncompliance with any of the foregoing.

(o) Title to and Condition of Assets. VNA has, and at the Closing Date will have, good and marketable title to all property and assets purported to be owned by VNA, subject only to those options, rights of first refusal, liens, restrictions, encumbrances, pledges, and security interests described on SCHEDULE 2.2(o). Except as disclosed on SCHEDULE 2.2(o), the property and assets of VNA are in good condition and repair in all material respects, free of significant defects of materials or workmanship, and are without the present need for any major (ie: in excess of \$50,000 in any one instance or more than \$100,000 above the current fiscal year budget in the aggregate) replacement equipment, repairs, construction, or reconditions being required by any of them.

(p) Contracts and Commitments. Except as set forth or described in SCHEDULE 2.2(p) hereto, VNA does not have and at the Closing Date will not have any contracts or agreements which are not cancelable upon thirty (30) days notice including, but without limiting the generality of the foregoing, any commitments or obligations, contingent or otherwise, under any contract or agreement (i) for the purchase or sale of inventory, (ii) for the purchase or sale of supplies, services or other items, (iii) for the purchase or sale of any equipment or machinery, or (iv) for the performance of services for others; and at the Closing Date VNA will not have any such commitment or obligation except those incurred in the ordinary course of business, those listed in the aforesaid SCHEDULE 2.2(p), or those consented to in writing by KCH. VNA has performed all obligations required to be performed under any such contract or agreement and is not in default or in arrears in any material respect under the terms thereof. Except as disclosed on SCHEDULE 2.2(p), VNA has not received notice of any default or failure of performance under any such contract or agreement, which default or failure has not been waived or cured. Each such contract or agreement is in full force and effect on the date hereof and true and correct copies of each thereof have been or will be, prior to the Closing, made available or delivered to KCH.

(q) Accounts Receivable; Reserves. The accounts receivable of VNA reflected on the October 31, 1994 financial statements are, and those existing on the Closing Date (i) shall be, comprised of valid claims in the full amount thereof against the debtor charged therewith on their books; (ii) except as disclosed on such financial statements or otherwise disclosed to KCH, shall all have been acquired in the ordinary course of business; (iii) shall be subject to no known defenses, set-offs or counterclaims; and (iv) shall be collectible in full, less the reserves for bad debts and third party payor adjustments reflected on the October 31, 1994 balance sheet and on the balance sheets to be delivered to KCH between the date of this Agreement and the Closing Date.

(r) Bank Accounts. SCHEDULE 2.2(r) hereto contains a true and complete list as of October 31, 1994 of all accounts of VNA with banks, trust companies, savings and loan associations, brokerage houses, and money managers, and the names of all persons authorized to draw thereon or to have access thereto.

(s) Trademarks, Trade Names, Etc. SCHEDULE 2.2(s) hereto sets forth all, if any, of the trademarks, trade names, service marks, patents, copyrights, registrations of VNA, or applications with respect thereto, and licenses or rights under the same presently owned, used or intended to be acquired or used by it, and to the extent set forth in SCHEDULE 2.2(s), the same have been duly registered in such offices as are indicated thereon.

(t) Accuracy of Information. The financial materials, schedules and other materials supplied and to be supplied to KCH pursuant to this Agreement are and shall be substantially complete and correct in all material respects, include and shall include all material acts required to describe fairly and accurately the financial condition of Health Midwest and do not and shall not omit any material fact necessary to make such materials not misleading.

(u) Reports and Returns. VNA has timely filed all reports and returns heretofore required by federal, state or municipal authorities and all reports and returns to the various governmental authorities which control, directly or indirectly, any of its activities. All such reports and returns are based upon accurate information and reasonable assumptions and were prepared and filed in the manner prescribed by applicable law and/or regulation.

(v) Additional Documents Supplied by VNA. Health Midwest has delivered or made available, or will deliver or make available before Closing, to KCH true and exact copies of (i) all cost reports VNA has filed with Medicare and Medicaid for the last three (3) years, as well as all correspondence and other documents relating to any disputes and/or settlements with Medicare or Medicaid within the last three (3) years, and (ii) all appraisal reports, surveys or other documents which evaluate or describe any of the properties and assets of VNA or any of its subsidiaries within the last three (3) years, and (iii) all reports VNA and its predecessors in interest have filed with the U.S. Department of Health and Human Services, the U.S. Drug Enforcement Administration, Missouri Division of Health, and Missouri Health Facilities Review Committee, as well as all correspondence and other documents relating to any audits, disputes, and/or settlements with any of these governmental agencies within the last three (3) years.

(w) Subsidiaries, Partnerships and Investments. Except as disclosed in SCHEDULE 2.2(w) hereto, (i) VNA does not own capital stock or other securities of, or any equity interests or investment in, any nonpublicly traded corporation, partnership, joint venture, or other entity; (ii) all such equity interests in each of the corporations, partnerships, joint ventures and other entities named in such SCHEDULE 2.2(w) are owned free and clear of all mortgages, liens, pledges, charges, security interests, encumbrances, options, rights of third parties, charges and restrictions whatsoever (collectively "Liens") other than those disclosed on SCHEDULE 2.2(w), all of which would not materially adversely effect the operations of VNA.

(x) Hazardous Substances. All real property, buildings and other improvements thereon owned by VNA (for purposes of this Section 2.2(x), collectively referred to as the "property") have never been and are not currently used as a site for the storage or disposal of solid waste, infectious waste, petroleum

products, pesticides, PCBs, asbestos, toxic substances or materials or hazardous substances or materials (herein collectively referred to as "hazardous substances"), except for the temporary storage of any such materials pending proper disposal. Except for the generation of hazardous substances, which have been and are being disposed of in compliance with applicable environmental laws, the property has never been and is not currently used as a site for the generation of hazardous substances. Except as disclosed on SCHEDULE 2:2(x), no underground fuel storage tanks have ever been nor are they currently located on or within the property. VNA and the property, including any underground fuel storage tanks located within the property, are in full compliance with all environmental laws, and no event has occurred that would constitute non-compliance thereof, whether upon the giving of notice or passage of time or both. No governmental agency or authority has issued any notices or claims or commenced any proceedings regarding or alleging the existence, storage or disposal of hazardous substances on the property, or the discharge or release of hazardous substances from the property. For purposes hereof, "applicable environmental laws" shall mean the Resource Conservation and Recovery Act of 1981 (as amended) ("RCRA"), the Comprehensive Environmental Response Compensation and Liability Act of 1980 (as amended) ("CERCLA"), the Hazardous Waste Management Act of 1978 (as amended), the Clean Air Act of 1970 (as amended), and any other environmental laws of the United States, the State of Missouri, and the ordinances of any applicable county or municipality, and "hazardous substance" and "release" shall have the meaning specified in such applicable environmental laws.

### ARTICLE 3

#### CONDUCT OF BUSINESS PENDING CLOSING; CONFIDENTIALITY

Section 3.1 Affirmative Covenants. From and after the signing of this Agreement and continuing until the Closing Date, KCH shall and shall cause its subsidiaries to:

(a) Compliance with Laws. Comply in all material aspects with all applicable laws, rules, regulations, and orders, including, but not limited to, federal and state laws, rules and regulations applicable to hospitals, Medicare and Medicaid, the Code, and ERISA.

(b) Financial and Other Reports. Furnish to designated representatives of Health Midwest:

(i) promptly following preparation thereof, monthly unaudited financial statements of their operations, together with all management information support data to be provided to their directors for each such month, including, but not limited to, monthly cash position reports, monthly inpatient

activity reports, health care utilization pattern reports by service, and as otherwise reported, productivity pattern reports such as FTE by department or service, and liability issue reports;

(ii) promptly after the filing or receiving thereof, copies of any and all reports and notices which they or any of their subsidiaries file under ERISA with the Pension Benefit Guaranty Corporation ("PBGC"), the U.S. Department of Labor, or the Internal Revenue Service, or which they or the Pension Plan receives from PBGC, the U.S. Department of Labor, or the Internal Revenue Service, and which specifically address the Pension Plan (and are not general mailings to all Plan sponsors);

(iii) promptly after the filing or receiving thereof, copies of any and all reports, notices, and correspondence which they file with or receive from federal and state agencies regulating their business and which specifically address their operations and are not general mailings to their industry; and

(iv) promptly after the filing or receiving thereof, copies of all tax returns, reports, notices and correspondence which they or any of their subsidiaries file with or receive from the Internal Revenue Service, the Missouri Department of Revenue, and any other federal, state or local agency with taxing authority over any of them, except for general mailings to taxpayers.

(c) Preservation of Business and Corporate Existence. Use reasonable care to operate their businesses in the manner necessary to maintain the good will of their physicians, personnel, allied health professionals, patients, third party payors, customers and suppliers and their reputation in the communities they serve; maintain in good standing their corporate existence and right to transact business in those states in which they are now or may hereafter be doing business; maintain KCH's current status as an organization exempt from federal income tax under §501(c)(3) of the Code; and maintain all licenses, permits and registrations necessary to or required for the conduct of their businesses.

(d) Insurance. Insure and keep insured at all times with good and responsible insurance companies: (i) all of their property of an insurable nature, including, without limiting the generality of the foregoing, all real estate, equipment, fixtures and inventories, against fire and other casualties in such manner and to the extent that like properties are usually insured by others operating properties of a similar character in a similar locality; and (ii) against liability on account of damage to persons or property (including professional and general liability insurance and under all applicable worker's compensation laws)-in such manner and to the extent that like risks are usually insured by persons conducting similar businesses.

(e) Payment of Taxes. Pay and discharge, before they become delinquent, all taxes, assessments and other governmental charges imposed upon KCH any of its subsidiaries, any of their properties, or any part thereof, or upon the income or profits therefrom and all claims for labor, materials or supplies which if unpaid might be or become a lien or charge upon any of such property, except such items as they are in good faith appropriately contesting and as to which they have provided adequate reserves.

(f) Maintenance of Properties and Leases. Use reasonable care to maintain, preserve and keep their properties and every part thereof in good repair, working order and condition, from time to time; make all needful and proper repairs, renewals, replacements, additions, betterments and improvements thereto; and maintain all leases of real or personal property in good standing, free of any defaults thereunder.

(g) Notice of Material Adverse Effect. Give prompt notice in writing to Health Midwest of any nonobservance of any of the covenants in this Article III or any development or the occurrence of any event, financial or otherwise, which constitutes a default under any agreement relating to borrowed money or which may or shall materially adversely affect the business, properties or affairs of KCH or any of its subsidiaries, or KCH's ability to perform its obligations under this Agreement or any other agreements, instruments, or documents related thereto.

(h) Regular Meetings of Chief Officers. The Chief Executive Officer of KCH and a Senior Management Officer of Health Midwest and such other personnel as they deem appropriate shall meet on a regular basis as appropriate to review KCH financial and management reports, short-term and long-term planning, and results of operations.

Section 3.2 Actions Requiring Consent. From and after signing of this Agreement and prior to the Closing Date, except as otherwise consented to or approved in writing, KCH and its subsidiaries shall not:

(a) enter into, renew, amend, or terminate any contract or agreement to which any of them is a party and which : (i) is with any third party payor of health care services, including any HMO, PPO, insurance company, employer or union fund, and governmental agency; (ii) involves expenditure or receipt of more than \$5,000 (other than provision of patient care services in the ordinary course of business); or (iii) is for a term exceeding one (1) year;

(b) sell, lease or transfer all or a substantial part of their properties or assets or subject the same to a mortgage, pledge, lien or other encumbrance, including but not limited to sale of the assets KCH Computer Systems, Inc.;

(c) incur any other contractual obligation or liability, absolute or contingent, other than current liabilities incurred in the ordinary course of business, or make any loans or advances to any person, firm or corporation which is not a subsidiary or affiliate of KCH or assume, guarantee, endorse or otherwise become liable for the obligations of any person, firm or corporation which is not a subsidiary or affiliate of KCH; or

(d) agree to settle any pending or threatened malpractice or general liability litigation or claims against any of them, except for those settlements which are covered by insurance policies where the insurer has recommended settlement and the cost to KCH is limited to applicable deductibles.

Section 3.3 Access to Properties and Records. Following execution hereof and prior to the Closing Date, KCH (a) will give to Health Midwest and its representatives full access upon reasonable prior notice, during ordinary business hours to the premises, records, minute books, books of account, contract records and tax records of KCH and its subsidiaries, and (b) will furnish to Health Midwest all information with respect to the operations and affairs of KCH and its subsidiaries as Health Midwest may from time to time reasonably request. Health Midwest shall be entitled to conduct a physical inspection and environmental assessment of all real property, buildings, improvements, machinery and equipment of KCH and its subsidiaries and to review their books and records pertaining to all such assets and properties. KCH agrees to make the same available to Health Midwest and its agents for review during normal business hours upon Health Midwest's request made a reasonable time in advance. Health Midwest shall make such physical inspection, environmental assessment and review of books and records at its cost. Health Midwest shall conduct its review and inspection of operations, assets, books, records and properties of KCH and its subsidiaries in a manner so as not to materially interfere with the conduct of their operations.

Section 3.4 Confidentiality and Publicity. Health Midwest and KCH on behalf of themselves and their related entities, mutually agree that:

(a) Any confidential or proprietary matters (except publicly available or freely usable material as otherwise obtained from another source who was rightfully in possession of and entitled to disseminate such material) respecting either party or their respective related entities will be kept in strict confidence by the other party to this Agreement, and shall not be used or disclosed by the other party if the transaction contemplated by this Agreement is not consummated. The provisions of this Section 3.4 shall survive termination of this Agreement. In the event of termination of this Agreement, each party shall use all reasonable efforts to return, upon request, to the other party, all documents (including reproductions thereof) received from or at the direction of the other party (and, as to reproductions, all reproductions made by or on behalf of the receiving party) that include any information not within the exceptions contained in the first sentence of this Section 3.4; and



- (b) Neither party will issue any public announcement concerning the transaction contemplated by this Agreement without the prior approval of the other party.

#### ARTICLE 4

##### CONDITIONS PRECEDENT TO CLOSING

Closing of this transaction shall not occur unless all of the conditions precedent set forth in this Article IV shall have been satisfied or waived in writing on or before the Closing Date.

Section 4.1 Conditions Precedent to Health Midwest's Obligation to Close. Health Midwest shall not be obligated to close unless all of the following conditions are satisfied on or before the Closing Date or Health Midwest elects to waive in writing any condition which has not been satisfied:

(a) Correctness of Representations and Compliance with Agreement. All of the representations of KCH contained in this Agreement shall be true as of the date of this Agreement and shall be deemed to have been made again at and as of the Closing Date, and shall then be true in all respects, and KCH shall have caused all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing to be so performed or complied with.

(b) No Action, Etc. No action or proceeding shall have been brought or threatened before any court or administrative agency to prevent the consummation of, or to seek damages in a material amount by reason of the transactions contemplated hereby, and no governmental authority shall have asserted in writing that the within transaction (or any other pending transaction involving Health Midwest, HMDG and VNA when considered in light of the effect of the within transaction) shall constitute a material violation of law or give rise to material liability on the part of Health Midwest or HMDG;

(c) Legal Matters. All actions, proceedings, instruments and documents required to carry out this Agreement and all other related legal matters, instruments and documents required to carry out this Agreement or incidental hereto shall have been approved by legal counsel to Health Midwest; which approval shall not be unreasonably withheld, and Health Midwest's legal counsel shall have been furnished with all actions, documents and instruments as they shall have reasonably requested in connection with the transactions contemplated herein;

(d) Incumbency Certificates. Health Midwest shall have received incumbency certificates, dated as of the Closing Date, certifying the incumbency of each officer and director of KCH and its subsidiaries, and containing specimens of the signatures of the officers who are signing documents to be delivered on the Closing Date;

(e) Certified Resolutions. KCH shall have furnished resolutions, certified by the appropriate officers (i) of KCH authorizing execution of this Agreement and the transactions contemplated hereby, (ii) of KCH amending its Articles and Bylaws in the manner required by 1.4; (iii) of KCH approving merger of VNA into KCH consistent with the Strategic Plan established under Section 1.1, (iv) of KCH's subsidiaries amending the Articles of Incorporation and/or Bylaws of each of them in the manner required by Section 1.6 of this Agreement, and (v) of KCH electing to its Board of Directors the individuals identified on EXHIBIT B attached hereto;

(f) Governmental Compliance. The parties shall have complied with the preclosing requirements, if any, of the U.S. Department of Health and Human Services, the Missouri Division of Health, the Missouri Health Facilities Review Committee, and any other governmental agency with jurisdiction to regulate the business of KCH or Health Midwest;

(g) Lender Approvals. The parties shall have received written approval of the transaction by any lender or party which may have an agreement with Health Midwest, HMDG, VNA, KCH or any subsidiaries of KCH which limits or restricts the obligations, covenants and conditions to be observed or performed by Health Midwest and KCH hereunder;

(h) Due Diligence Review and Strategic Plan. Health Midwest shall have completed its due diligence review of the financial condition, business, operations, prospects and relationships of KCH and its subsidiaries to Health Midwest's reasonable satisfaction. The strategic plan to be mutually developed and agreed to pursuant to Section 1.1 of this Agreement shall have been completed and received approval by the Health Midwest Board of Directors;

Section 4.2 Conditions Precedent to the Obligations of KCH to Close. KCH shall not be obligated to close unless all of the following conditions are satisfied on or before the Closing Date or KCH elects to waive in writing any condition which has not been satisfied:

(a) Correctness of Representations and Compliance with the Agreement. All of the representations of Health Midwest contained in this Agreement shall be true as of the date of this Agreement and shall be deemed to have been made again at and as of the time of the Closing, and shall then be true in all material respects, and Health Midwest shall have caused all agreements, covenants and conditions required

by this Agreement to be performed or complied with by it prior to or at the Closing to be so performed or complied with;

(b) No Action, Etc. No action or proceeding shall have been brought or threatened before any court or administrative agency to prevent the consummation of, or to seek damages in a material amount by reason of the transaction contemplated hereby, and no governmental authority shall have asserted in writing that the within transaction (or any other pending transaction involving KCH when considered in light of the effect of the within transaction) shall constitute a material violation of law or give rise to material liability on the part of KCH;

(c) Legal Matters. All actions, proceedings, instruments and documents required to carry out this Agreement and all other related legal matters, instruments and documents required to carry out this Agreement or incidental hereto shall have been approved by legal counsel to KCH which approval shall not be unreasonably withheld, and such counsel shall have been furnished with all such actions, documents and instruments as they shall have reasonably requested in connection with the transactions contemplated herein.

(d) Incumbency Certificates. KCH shall have received incumbency certificates, dated as of the Closing Date, certifying the incumbency of each officer and director of Health Midwest, HMDG and VNA and containing specimens of the signatures of each of the officers who are signing documents to be delivered at the Closing;

(e) Certified Resolution. HMDG shall have furnished resolutions, certified by the appropriate officers (i) of Health Midwest and HMDG authorizing execution of this Agreement and the transactions contemplated hereby, (ii) of HMDG amending its Bylaws in the manner required by Section 1.5, (iii) of VNA approving the merger with KCH consistent with the Strategic Plan established under Section 1.1, and (iv) of HMDG electing KCH's representatives to its Board as shown on **EXHIBIT B** attached hereto;

(f) Governmental Compliance. The parties shall have complied with the preclosing requirements, if any, of the U.S. Department of Health and Human Services, the Missouri Division of Health, the Missouri Health Facilities Review Committee, and any other governmental agency with jurisdiction to regulate the business of Health Midwest and KCH;

(g) Lender Approvals. The parties shall have received written approval of the transaction by any lender or party which may have an agreement with Health Midwest, HMDG, VNA, KCH, or any subsidiaries of KCH which limits or restricts

the obligations, covenants and conditions to be observed or performed by them hereunder; and

(h) Due Diligence Review and Strategic Plan. KCH shall have completed its due diligence review of the financial condition, business, operations, prospects, and relationships of Health Midwest, HMDG and VNA to KCH's reasonable satisfaction. The strategic plan to be mutually developed and agreed to pursuant to Section 1.1 of this Agreement shall have been completed and received approval by the KCH Board of Directors.

## ARTICLE 5

### CLOSING

Section 5.1 Time and Place. Unless otherwise agreed to by the parties, the Closing under this Agreement for the integration of KCH and its subsidiaries into the Health Midwest System shall take place at the offices of KCH, 1625 W. 92nd Street, Kansas City, Missouri, on January 4, 1995, at 9:00 a.m., local time. All references in this Agreement, its exhibits and schedules, and in the agreements, instruments and documents delivered pursuant hereto, to the Closing or the Closing Date shall mean December 31, 1994, or such other date as the parties mutually agree. Notwithstanding the foregoing to the extent feasible for accounting purposes the Closing shall be deemed effective as of the close of business on December 31, 1994.

Section 5.2 Deliveries. At the Closing:

(a) KCH shall deliver to Health Midwest:

(i) The Certified resolutions required by Section 4.1(e);

(ii) Certificates of Good Standing or corporate existence of KCH and its subsidiaries issued by the Secretary of State of Missouri, dated not more than thirty (30) days prior to the Closing Date;

(iii) Duplicate originals of Amended Articles of Incorporation effecting the modification of the governing structure of KCH and its subsidiaries as required by Sections 1.4 and 1.6 and in the form and executed in the manner specified by R.S.Mo. §355.070 and R.S.Mo. §355.075 for filing by the parties with the Missouri Secretary of State. Following Closing, KCH shall cause the Missouri Secretary of State to issue to Health Midwest certificates of amendment evidencing the filing of such Amended Articles of Incorporation;

(iv) Duplicate originals of the Articles of Merger effecting merger of VNA into KCH consistent with the Strategic Plan established under Section 1.1 and executed by KCH in the manner specified by R.S.Mo. §355.195, §355.200, §355.205, and §355.210 for filing by the parties with the Missouri Secretary of State. Following Closing, KCH shall cause the Missouri Secretary of State to issue to Health Midwest a Certificate of Merger evidencing the filing of such Articles of Merger;

(v) The incumbency certificates required by Section 4.1(d) hereof;

(vi) The Bylaws of KCH and its subsidiaries amended in the manner required by this Agreement and certified by their respective Secretaries to have been duly adopted by their respective Boards of Directors; and

(vii) Any such other documentation as counsel to Health Midwest may reasonably request.

(b) Health Midwest shall deliver to KCH:

(i) The certified resolutions required by Section 4.2(e);

(ii) Certificates of Good Standing or corporate existence of Health Midwest, HMDG and VNA issued by the Secretary of State of Missouri, dated not more than thirty (30) days prior to the Closing Date;

(iii) Duplicate originals of the Articles of Merger effecting merger of VNA into KCH consistent with the Strategic Plan established under Section 1.1 and executed by VNA in the manner specified by R.S.Mo. §355.195, §355.200, §355.205, and §355.210 for filing by the parties with the Missouri Secretary of State;

(iv) The incumbency certificates required by Section 4.2(d) hereof;

(v) The Bylaws of HMDG amended in the manner required by this Agreement and certified by the Secretary of HMDG to have been duly adopted by the Board its Directors; and

(vi) Any such other documentation as counsel to KCH may reasonably request.

## ARTICLE 6

### MISCELLANEOUS

Section 6.1 Further Assurances. Each party hereto shall execute such further instruments and documents as counsel for the other party may reasonably require to carry out effectively the transactions contemplated hereby and to evidence the fulfillment of the agreements contained herein and the performance of all conditions to the consummation of such transactions.

### Section 6.2 Representations and Agreements Do Not Survive Closing.

(a) Except as otherwise set forth in Section 6.2(b) below, the representations and agreements of the parties set forth herein and in the certificates to be delivered at the Closing shall not survive the termination of this Agreement nor shall they survive the Closing and, following termination of this Agreement or the Closing, as the case may be, no party shall have a cause of action or any other remedy based upon the noncompliance of any party with any provision of this Agreement or based upon the omission, untruth or misleading nature of any representation made hereunder. Health Midwest and KCH shall each rely upon their own investigation in determining whether or not to close the transactions contemplated hereunder.

(b) The provisions of Article I, the provisions of Section 3.4, the provisions of this Section 6.2, and the provisions of Sections 6.3 through and including Section 6.11 shall survive the Closing.